

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6300 of 1988

with

SPECIAL CIVIL APPLICATION NO 2484 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HARIHAR PRAJAPATI

Versus

DINESH & RAMESH ENGINEER P LTD

Appearance:

MR NR SHAHANI for Petitioners

MR SN SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/1999

ORAL JUDGEMENT

Heard Mr. Sahani, the learned for the workmen
and Mr. Soparkar, the learned advocate for the
management.

In both these petitions, award passed by the
Presiding Officer, Labour Court in Reference LCIDA No.
427 of 1984 dated 26.2.1988 is under challenge. The

workmen have challenged the very same award through union and the employer has also challenged the same before this Court in these petitions.

The case of the union was that the employer has terminated the services of the workmen during 1981 on 19.10.1981 mainly for joining the union. The factory of the employer is engaged in the manufacturing of moulded cast parts and other items. The employer has got two other sister concerns being M/s. Deepak Dye Casting and M/s. Dinesh Models and Alloys. The employer started to demand an undertaking of good conduct bond on the alleged ground that the production was going down. Since the workmen refused to sign this incriminating undertaking which referred to give specific production observing discipline and not damaging the properties, machineries and assets of the Company, harsh actions were taken. The contention was raised by the union that the employer has no authority or jurisdiction to demand any undertaking or good conduct bond from the workmen as a precondition of joining their service. Such unfair labour practice is always condemned by the Courts and is also deprecated from time to time. According to the union, the employer had initially taken the stand that there was a strike and no notices were given to any of the workman go slow. That it has not shown what loss or damage has been caused to any machinery or property or assets of the company and it was only a vague allegation. The unwillingness on the part of the respondent company to employ any of the workmen and also fact that 20 to 25 new workmen were employed indicates that the termination of service of the workmen without any cause is absolutely illegal and arbitrary action on the part of the company.

The workmen had challenged the said action through the union before the Presiding Officer, Special Labour Court, Ahmedabad in Reference No. LCIDA 427 of 1984 who, under his award dated 26th February, 1988, directed the employer that if all the workmen concerned in the said reference submits undertaking before the company as referred in the award, then, the company will reinstate the concerned workmen in service and the labour court has rejected the other reliefs which were claimed by the workmen.

The very same award has been challenged by the employer before this court by filing special civil application no. 2484 of 1993 contending inter alia that the company is Small Scale Industry at GIDC Estate, Vatva. The company started manufacturing activities in the year 1979. At the relevant time, about 15 persons

were employed by the company. From the very beginning, the attitude of the workmen was non cooperative and distinctive. There were very serious disputes between the labour and the management which were ultimately settled by the petitioner company in the year 1981 on 29th April, 1981. In spite of the said settlement, the workmen did not behaved properly and went on obstructing the production activities. Therefore, on 16th August, 1981, notice Exh. 19 was placed on the notice board by the company pointing out the facts on record and another notice dated 29th August, 1981 was also placed on the notice Board. In spite of this, the position has not shown improvement. It was also found that the workmen did not put sufficient work and even those workmen who were willing to work were also not permitted to work. In view of this conduct on the part of the workmen, it was decided to take undertaking from the workmen that they would give production as per the stipulation and shall observe the discipline and shall not damage the property and machineries and assets of the Co. However, the workmen refused to sign the same. It was the case of the petitioner-employer that in view of the reaction shown by the workmen, the employer was having no option but to terminate the services of the workmen as they refused to execute the undertaking for maintaining the discipline and not to adopt the go slow tactics or not to cause damage to the property, machinery and assets of the Company. Therefore, ultimately, in reference before the labour Court, Ahmedabad, an award was passed directing to the petitioner Company to reinstate the concerned workmen provided they execute the as required by the Petitioner Company which award passed by the labour Court, Ahmedabad has been impugned, both by the workmen and the employer by filing the petitions as aforesaid.

Special Civil Application NO.6300 of 1988 filed by the workmen challenging the award of the labour court was admitted by this court by issuing the rule and interim relief was refused by this Court. Special Civil Application No. 2484 of 1993 filed by the employer challenging the very same award has been admitted by this Court by issuing rule on 2nd April, 1993 and was ordered to be heard alongwith Special Civil Application NO. 6300 of 1988. While admitting that petition also, interim relief was refused by this Court.

Both the petitions were listed for final hearing on 1st October, 1999. I have heard both the learned advocates who appeared for the respective parties. The respondent Co. in special civil application NO. 6300 of

1988 has initially filed affidavit in reply to the said petition and affidavit in rejoinder to the said reply was filed by the petitioners in the said petition. The respondent Co. in special civil application No. 6300 of 1988 has filed further affidavit in reply on 27th September, 1999 and produced before this Court on 1st October, 1999. In the said affidavit in reply filed by the employer in special civil application No. 6300 of 1988, it was pointed out by the respondent CO. that the concerned workmen who were listed with the petition were desirous of employment. Dispute therefore survive qua said 17 workmen covered under one or both the lists. IN view of these facts, it was further pointed out by the Company that the Company has entered into settlement with each of the said 17 workmen and each of them has entered into an agreement whereby they have settled all their disputes with the respondent CO. made a statement that none of them is desirous of pursuing the present petition and in view of the said agreement entered into with each of the said 13 workmen, the proceedings did not survive and are required to be disposed off as having become infructuous. Copy of the said further affidavit in reply filed by the respondent Co. in special civil application No. 6300 of 1988 was served with to the learned advocate Shri N.R.Sahani by the respondent Co. on 28th September, 1999. At the time of hearing of these petitions, Mr.Sahani has not been able to dispute the said facts which has been pointed out by the respondent Co. in its further affidavit in reply. Mr. Sahani has submitted before this Court that he is not able even to contact the clients as all the concerned workmen belong to other States. Alongwith the said further affidavit in reply, the respondent Co. has produced settlement arrived at between the workmen and the Company under section 2P of the ID Act, 1947 and produced each settlement on record. I have carefully perused the settlements which were produced on record.

In view of the further affidavit in reply filed by the respondent Co. accompanied by the settlements entered into with each of the concerned workman by the respondent CO., and also in view of the fact that Mr. Sahani is not able to dispute the said facts, both the petitions have now become infructuous. Therefore, both the petitions are disposed off as having become infructuous. Rule in both the petitions is discharged with no order as to costs.

1.10.1999. (H.K.Rathod,J.)

Vyas